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No. 89-566

Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1989

TSAUSHU C. LACKLAND,

Petitioner,

v.

STATE UNEMPLOYMENT APPEALS BOARD,

Respondent.

J.C. PENNY COMPANY,

Real Party In Interest.

ON A PETITION FOR A WRIT OF CERTIORARI
FROM THE SUPREME COURT
OF THE STATE OF CALIFORNIA

RESPONDENT'S BRIEF IN OPPOSITION

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BEST AVAILABLE COPY

38 pp

QUESTIONS PRESENTED

1) Does this court have jurisdiction to review this case?

2) Should this case be reviewed pursuant to Supreme Court Rule 17?

3) Is the decision of the California Court of Appeal correct?

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TSAUSHU C. LACKLAND,

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STATE UNEMPLOYMENT APPEALS BOARD,

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ON PETITION FOR A WRIT OF CERTIORARI
FROM THE SUPREME COURT
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RESPONDENT'S BRIEF IN OPPOSITION

The respondent, State of California Unemployment Insurance Appeals Board, respectfully requests that this Court deny the Petition For Writ of Certiorari seeking review of the decision by the California Court of Appeal

dated March 31, 1989. A petition for rehearing was denied by the California Court of Appeal on April 20, 1989. On June 28, 1989 the California Supreme Court denied the petition for review without comment.

I.

OPINIONS BELOW

The order of the California Supreme Court issued on June 28, 1989 denying the petition for review is unreported and is set forth in the Appendix to Respondent's Brief at p. 1. The Order of the Court of Appeal denying the petition for rehearing is unreported and is set forth in the Appendix to Respondent's Brief at p. 2. The Decision of the Court of Appeal of the State of California is unreported and is set forth in the Appendix to Respondent's Brief at pp. 3-16. The Decision of the Contra Costa County Superior Court is

unreported and is set forth in the Appendix to Respondent's Brief at p. 17.

II.

JURISDICTION

The order of the Supreme Court of the State of California denying the petition for review was filed on June 28, 1989. It is not clear under what authority the petitioner seeks to invoke jurisdiction. As discussed more fully below, it is the respondent's position that there is no jurisdictional basis for review by this Court.

III.

STATUTES AND RULES INVOLVED

28 U.S.C. section 1257:

> "Final judgment or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c.646, 62 Stat. 929."

Rule 17, Supreme Court Rules:

".1 A review on writ of certiorari is not a manner of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

/

"(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

"(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

"(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a

way in conflict with applicable decisions of this Court."

California Unemployment Insurance Code section 1328:

"The department shall consider the facts submitted by an employer pursuant to Section 1327 and, if benefits are claimed subsequent to the filing of the new or additional claim, make a determination as to the claimant's eligibility for benefits. The department shall promptly notify the claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 or this section and authorized regulations of the determination or reconsidered determination and the reasons therefor. If after notice of a determination or reconsidered determination the employing unit acquires knowledge of facts which may affect the eligibility of the claimant and such facts could not reasonably have been known within the 10-day period provided by Section 1327, the employing unit shall within 10 days of acquiring such knowledge submit such facts to the department, and such 10-day period may be extended for good cause. The claimant and any such employer may

> appeal from a determination or reconsidered determination to an administrative law judge within 20 days from mailing or personal service of notice of the determination or reconsidered determination. The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. The director shall be an interested party to any appeal."

III.

STATEMENT OF THE CASE

This case involves the dismissal of the petitioner's appeal from a decision by the California Unemployment Insurance Appeals Board disqualifying her for unemployment benefits. The appeal was dismissed because it was three years late. After the case was dismissed by the trial court, petitioner appealed to the California Court of Appeal. In an unpublished decision the Court of Appeal affirmed the decision of the trial

court on the same grounds. A motion for rehearing was denied. A petition for review to the California Supreme Court was denied *In Bank* without comment. This petition followed. It is the respondent's position that there is no jurisdictional basis for this court to review this case, that review is improper under Rule 17 and that the decision of the California Court of Appeal is correct.

V.

ARGUMENT

1. There Is No Jurisdictional Basis For This Court To Review This Case.

Final judgments of state courts may be reviewed by this court by writ of certiorari where the validity of a federal treaty or statute is questioned, where a state statute is questioned on the ground that it is contrary to the Constitution, treaties, or laws of the United States, or where any right, privilege or immunity is claimed under

federal law or the U.S. Constitution. 28 U.S.C. section 1257(3). None of these grounds is present here. This case involves the denial of unemployment benefits to the petitioner and the dismissal of her appeal therefrom because it was not timely filed. No federal question was raised below, none is raised here, nor were any questions of law ever raised. This case involves the denial of unemployment benefits to the petitioner on a purely factual ground -- her failure to show good cause for her untimely appeal. There is no jurisdiction for this Court to review this case.

2. This Case Is Not Proper For Review Under Supreme Court Rule 17.

Under Rule 17 review on writ of certiorari will be granted only when there are "special and important reasons." Decisions that the court will consider for review include those that present a conflict among courts on a

federal question, or where an important question of federal law is at issue. As discussed *supra*, there are no questions of law, no federal issues and no issues of any significance in this case. One individual, the petitioner, was denied unemployment benefits because her appeal was untimely and she failed to demonstrate good cause for the untimely appeal. This is hardly a case that calls for review under Rule 17.

3. The Decision Of The Court Of Appeal Is Correct.

Under California Unemployment Insurance Code Section 1328 a claimant has 20 days to appeal a denial of unemployment benefits. The petitioner's appeal was filed three years after the appeal was mailed to her.

The holding by the California Court of Appeal that there was substantial evidence for a dismissal of the untimely appeal is fully supported by the record that was

before the Court and relevant case authority. To justify her egregious delay in filing an appeal, the petitioner variously argued that she was misled by the respondent, that she didn't receive notice of the denial and that she didn't understand the appeal process. These arguments have no merit. Although the petitioner testified at the hearing that she "didn't remember" receiving a Notice of Determination in 1982, she readily admitted receiving "another form . . . in the mail that told me I was ineligible" and that she "was told" she was disqualified in 1982. (CT 13, 14.) The Notice of Determination that she didn't "remember" receiving was sent to the address she was living at in 1982 and, according to a Department witness, there was no record of it being returned as undelivered. (CT 15, 16.) On the front of the notice was a clear statement informing the petitioner of the 20-day

appeal period. (CT 8.) The petitioner claimed she wasn't "aware that you could appeal anything that had been ruled by any government office." Nonetheless, she acknowledged receiving a handbook when she applied for benefits that she didn't read. (CT 14.)

Courts have found no good cause for untimely appeals in factual settings far less egregious than this. *Amaro v. Unemployment Insurance App. Bd.* (1977) 65 Cal.App.3d 715; *Martinez v. Unemployment Insurance App. Bd.* (1976) 63 Cal.App.3d 500; *Perez v. Unemployment Insurance App. Bd.* (1970) 4 Cal.App.3d 62. All of the above cases were duly cited by the Court of Appeal. Its decision is entirely in accord with that case law.

CONCLUSION

There is no jurisdictional basis for the court to review this case. Nor are there grounds for review under Rule 17. The decision of the California Court of Appeal is correct and is in accord with the record in this case and applicable case law.

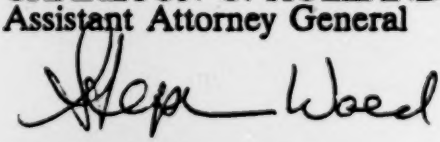
The petition for writ of certiorari should be denied.

DATED: NOVEMBER 16, 1989

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General

CHARLTON G. HOLLAND, III
Assistant Attorney General



STEPHANIE WALD
Supervising Deputy Attorney General

Attorneys for Respondent

APPENDICES

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL

First Appellate District, Division Four, No. A034071
SO10385

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

IN BANK

TSAUSHU C. LACKLAND,

Appellant

v.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,

Respondent

J.C. PENNY COMPANY,

Real Party In Interest

Appellant's petition for review DENIED.

Filed Supreme Court
June 28, 1989
Robert Wandruff, Clerk

COURT OF APPEAL OF THE
STATE OF CALIFORNIA
IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION: 4

LACKLAND, TSAUSHU C.
vs.
CALIF. UNEMPLOYMENT INSURANCE BOARD
J.C. PENNY COMPANY
A034071
Contra Costa County No. 275128

FILED
April 20, 1989
Court of Appeal - First App. Dist.
RON D. BARROW, Deputy

BY THE COURT:

The petition for rehearing is denied.

DATED: APRIL 20, 1989

ANDERSON P.J.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

TSAUSHU C. LACKLAND,

Petitioner and Appellant,

v.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,

Respondent and Respondent;

J.C. PENNY COMPANY,

Real Party In Interest.

_____/

Facts

Tsaushu C. Lackland (appellant) worked as a temporary employee for real party in interest, J.C. Penny Company in 1982. When she encountered difficulties in arranging for child care, she left this position. At that time the Employment Development Department (Department) denied appellant's claim for benefits on the basis (according to appellant) that she had not earned

enough money to qualify for benefits. The reasons stated for the decision were that the Department considered appellant's quit without good cause, and that it considered her available for work.

The Department mailed a notice of determination/ruling to appellant on March 25, 1982. On the front of the notice, appeared the statement in boldface type: "Any appeal from this notice, to be timely, must be filed in person or by mail on or before 4-14-82." The notice also directed appellant to see the reverse side for "an explanation of the law, appeal rights and certifying requirements." Additionally, the notice explained the reason for the decision denying benefits: "You quit your last employment because of child care problems. The record shows that your obligation to provide child care for your children could have been satisfactorily met without

quitting your employment. It therefore must be held that your quit was without good cause."

Although this notice of determination/ruling clearly informed appellant of her rights and responsibilities regarding an appeal, she did not file her appeal with the California Unemployment Insurance Appeals Board (respondent) until almost three years later, on January 23, 1985. Appellant had also received a handbook when she filed for unemployment insurance in 1982, but neglected to read that booklet until 1985. When the Board denied her appeal as untimely, appellant filed a writ of mandate in superior court, which was also denied, on September 20, 1985. Appellant filed a timely motion for reconsideration of that denial; however, that motion was also denied on January 10, 1986. Appellant appeals the denial of his motion and the reconsideration.

Contentions

Appellant makes several arguments concerning the Department's original denial of her benefits,[1] but those contentions are rendered moot here because of her failure to timely appeal therefrom. The only relevant contention is whether appellant had good cause to delay her appeal for almost three years. She excuses her delay by explaining that statements by the Department that she had not earned enough money to qualify for benefits

---

1. Appellant contends that the Department originally misinterpreted her claim, causing it to erroneously deny her benefits. She argues that she did not quit the job, but left temporarily, with an understanding that she would return after straightening out her problems with child care. She also states that the notice of determination/ruling contains conflicts regarding the reasons for decision, and that the Department must demonstrate that appellant received the notice of determination/ruling and that she deliberately delayed in filing an appeal for three years.

Appellant further contends that the lower court erred in its September 20, 1985, ruling denying her writ of mandate because it issued that order without explanation.

misled her in believing that she could not appeal. She also asserts that she did not file another claim for several years because she obtained other employment. Additionally, appellant argues that she failed to timely file her appeal because she relied on information she received from the Department and, therefore, invocation of the doctrine of estoppel is required.

The respondent contends that the record contains substantial evidence upon which to supports its decision dismissing appellant's original appeal as untimely, as well as the finding that appellant failed to show good cause for her untimeliness. We agree.

Discussion

As currently amended, Code of Civil Procedure section 1094.5 provides that standards for review of administrative orders on decisions. It states that unless a

court is authorized by law to exercise its independent judgment on the evidence, "abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence." (Code Civ. Proc., § 1094.5, subd. (c).) In James v. Dept. of Motor Vehicles (1968) 267 Cal.App.2d 750, a proceeding wherein the Department appealed the issuance of a writ of mandate setting aside its revocation of respondent's driving privileges, the court explained its application of section 1094.5, subdivision (c). It stated, """when a verdict is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the jury. When two or more inferences can be reasonably deduced from the facts, the reviewing court

is without power to substitute its deductions for those of the trial court.' . . ."" (Id., at p. 753, emphasis in original.)

According to these standards, the only relevant inquiry before this court is whether substantial evidence supports the trial court's affirmance of the Board's denial of appellant's benefits.

The Department's notice of determination/ruling clearly stated that if appellant chose to file an appeal of denial of benefits, she was required to do so within 20 days. The notice provided that this 20-day period closed on April 14, 1982. The 20-day allowance was as provided by Unemployment Insurance Code section 1328, which states as follows: "The claimant and . . . employer may appeal from a determination . . . to an administrative law judge within 20 days from mailing or personal service of

notice of the determination. . . . The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. . . ."

In this case, since appellant missed the 20-day period by approximately 3 years, she must demonstrate good cause for her delay if that delay is to be found excusable. Because she has made no showing of circumstances which approximate good cause, we find the trial court's denial of reconsideration supported by substantial evidence, and affirm.

Courts have evaluated what constitutes good cause in a variety of factual contexts. In circumstances of delays much less egregious than that in this case, the courts have found no good cause for the delays, and have refused to allow appeals in those situations.

In one case where petitioner delayed filing her appeal for approximately one month because of her "dismay occasioned by the denial of benefits," the court found her inadvertent delay inexcusable, and insufficient to constitute good cause. (Amaro v. Unemployment Ins. Appeals Bd. (1977) 65 Cal.App.3d 715.) The court noted that: "On the front of the notice petitioner received, in the lower right corner, was the statement in print, larger than ordinary typewriting, that she had until August 5, 1974, to file a timely appeal." (Id., at p. 718.) Petitioner testified that she did not read the statement about the time limit, because after reading the previous part of the notice denying benefits, she was too upset to read further. (Ibid.) The court held that her one-month delay was substantial, but her stated reason insubstantial, and affirmed the trial court's denial of relief. (Id., at p. 722.)

In Amaro, the petitioner also raised an issue of equitable estoppel, arguing that the Department's denial of her benefits constituted an incorrect decision, requiring that her late appeal be allowed. (Amaro, supra, 65 Cal.App.3d at p. 720.) She argued that the Department misled her regarding the legality of her claim, and that her ignorance of its correct legal interpretation caused her to rely upon the Department's assertions. (Id., at p. 721.) Citing legislative intent regarding the "good cause" requirements, the court declined to apply the doctrine of equitable estoppel in this case. (Id., at pp. 721-722.)

In another case, where petitioner appealed 20 days late because his family was ill and because he was occupied with looking for a new house, the court found no good cause for his delay. (Martinez v. Unemployment Ins. Appeals Bd. (1976) 63 Cal.App.3d 500.) Like the

Amaro court, this court noted that on the front page of the notification form received by petitioner, the statement appeared in boldface type: **"ANY APPEAL FROM THIS NOTICE MUST BE FILED ON OR BEFORE DECEMBER 20, 1974 TO BE TIMELY."** (Id., at p. 502, fn. omitted.) Petitioner filed his appeal on January 9, 1975. (Ibid.) In finding that the trial court's denial of petitioner's appeal was supported by substantial evidence, the court distinguished these facts from cases showing good cause. It cited two cases in each of which overburdened counsel had made calendaring errors causing them to file appeals three days after the deadline. (Id., at p. 504.) The court explained that this was the sort of error intended to be excused, in view of the "remedial objectives and informal procedures of the Unemployment Insurance Code. . . ." (Ibid.) However, it characterized

this case as "quite different," because "the claimant caused the delay himself." (Id., at p. 505.) That court also declined to accept appellant's argument in favor of applying equitable estoppel. (Ibid.)

In a third case, the court affirmed a finding of no good cause for petitioner's delay of five months in filing his appeal, where petitioner argued that he was misled by the Department's notices and thereby induced not to appeal. (Perez v. Unemployment Ins. App. Bd. (1970) 4 Cal.App.3d 62.) Like the two courts discussed above, this one also pointed out that on the front of the notice of determination received by appellant appeared a statement in heavy print informing appellant of the imminent deadline to file his appeal. (Id., at p. 64.) In Perez, petitioner contends that he did not think he should have appealed at the time when he received that notice, but

changed his mind five months later. (Id., at p. 65.) The court explained that both the administrative tribunal and the trial court found on the facts that petitioner failed to demonstrate good cause for his delinquent appeal. (Ibid.) It stated that "[t]o the extent that the issue is factual, or subject to the discretion of the trier of facts, it has been resolved against petitioner. . . ." (Ibid.) The court refused to find that as a matter of law, petitioner's good faith beliefs regarding the propriety of his appeal constituted good cause for his delay.

In the present case, appellant received a notice of determination/ruling from the Department on or about March 25, 1982. Appellant did not file an appeal until January 23, 1985, almost three years later. On the front of her notice, like those in the above-mentioned cases, was a statement in bold type, clearly informing appellant

of the 20-day period in which she could file a timely appeal. To justify her extreme delay, appellant attests only to her lack of understanding of the appeals process, and to alleged errors made by the Department in denying her benefits. Appellant offers no justification for her failure to read the explanatory handbook which she received along with her denial. In light of the relevant case law, and the explicit rule requiring a showing of good cause for extending the 20-day statutory period for filing an appeal, the trial court's finding of no good cause for delay is clearly supported by substantial evidence.

The judgment is affirmed.

In The Superior Court Of The State Of
California
IN AND FOR THE COUNTY OF CONTRA COSTA

TSAUSHU C. LACKLAND,

Dept. 9, No. 275128

Petitioner **NOTICE OF DECISION**

vs

STATE UNEMPLOYMENT INSURANCE
APPEALS BOARD,

Respondent

THE PETITION BY TSAUSHU C. LACKLAND FOR WRIT OF MANDATE was heretofore submitted to the Court for decision. The Court, having fully considered the same and being duly advised, now orders said petition denied.

FILED SEPTEMBER 20, 1985

J.R. Olsson, County Clerk

/s/
J. Barlettani

PROOF OF SERVICE BY MAIL

I hereby certify that I am a citizen of the United States, over the age of 18 years and not a party to the within action. I served a true copy of the foregoing document by placing the same in an envelope which was sealed, fully provided with postage thereon and deposited in the United States Mail at Martinez, California on Sept. 20, 1985.

Said envelope was addressed to

WILLIE M.J. CURTIS, Esq.
Deputy Attorney General
6000 State Building
San Francisco, CA 94102

TSAUSHU C. LACKLAND
110 Bailey Rd., Apt. #208
W. Pittsburg, CA 94565

I certify under penalty of perjury that the foregoing is true and correct.

Dated at Martinez, California, on Sept. 20, 1985.

/s/
J. Barlettani

CERTIFICATE OF SERVICE BY MAIL

TSAUSHU C. LACKLAND,

Petitioner,

v.

STATE UNEMPLOYMENT APPEALS BOARD,

Respondent.

J.C. PENNY COMPANY,

Real Party In Interest.

NO. 89-566

STEPHANIE WALD, a member of the Bar of the Supreme Court of the United States, states:

That her business address is 350 McAllister Street, Room 6000, in the City and County of San Francisco, State of California; that on November 16, 1989, she served true copies of the attached **Respondent's Brief In Opposition** and **Appendices** in the above-entitled matter on petitioner and real party in interest by placing same in envelopes addressed as follows:

Tsaushu C. Lackland
1743 Hanlon Way
Pittsburg, CA 94565

John H. Andrew
Western Regional Counsel
J.C. Penny Co.
6131 Orangethorpe Avenue
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California Court of Appeals
350 McAllister Street, Fifth Floor
San Francisco, CA 94102

California Supreme Court
350 McAllister Street, Fourth Floor
San Francisco, CA 94102

Contra Costa Superior Court
Attn: Ellen James, Judge
P.O. Box 911
Martinez, CA 94553

Said envelopes were then sealed and deposited in the United States Mail at San Francisco, California, with the postage thereon fully prepaid.

Stephanie Wald

STEPHANIE WALD
Supervising Deputy Attorney

JOAN CHICCARELLA
NOTARY PUBLIC - CALIFORNIA
COUNTY OF SAN FRANCISCO
My Commission Expires June 26 1992

Subscribed and sworn to before me this
16th day of November, 1989.

Joan Chiccarella

Notary Public in and for said County
and State